

ASSEMBLY BILL 419 (LRB -2067)

An Act to renumber and amend 949.04 (2); to amend 949.24 (1); and to create 901.08, 950.04 (1v) (er), 971.23 (5c) and 971.23 (6c) of the statutes; relating to: rape shield provisions in civil proceedings, discovery and inspection of victims and witnesses, and victims rights. (FE)

2009

09-11. A. Introduced by Representatives **Radcliffe, Parisi, Jorgensen, Shilling, Bies, Turner, Hraychuck, Bernard Schaber, Steinbrink, Roys, Staskunas, Berceau and Suder**; cosponsored by Senators **Taylor and Kedzie**.

09-11. A. Read first time and referred to committee on Corrections and the Courts 369

09-21. A. Fiscal estimate received.

09-23. A. Public hearing held.

09-28. A. Fiscal estimate received.

09-29. A. Fiscal estimate received.

09-30. A. **Assembly amendment 1** offered by Representative Parisi (**LRB a0783**) 416

10-20. A. Executive action taken.

10-27. A. Report Assembly Amendment 1 adoption recommended by committee on Corrections and the Courts, Ayes 11, Noes 0 457

10-27. A. Report passage as amended recommended by committee on Corrections and the Courts, Ayes 11, Noes 0 457

10-27. A. Referred to committee on Rules 457

10-27. A. Placed on calendar 10-29-2009 by committee on Rules.

10-29. A. Read a second time 477

10-29. A. **Assembly amendment 1 adopted** 477

10-29. A. Ordered to a third reading 478

10-29. A. Rules suspended 478

10-29. A. Read a third time and **passed** 478

10-29. A. Ordered immediately messaged 478

10-29. S. Received from Assembly 394

11-03. S. Read first time and referred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing 400

12-10. S. **LRB correction** 438

12-15. S. Public hearing held.

2010

02-04. S. Executive action taken.

02-05. S. Report concurrence recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0 543

02-05. S. Available for scheduling.

02-10. S. Placed on calendar 2-16-2010 pursuant to Senate Rule 18(1) 553

02-16. S. Senator Miller added as a cosponsor.

02-16. S. Read a second time.

02-16. S. Ordered to a third reading.

02-16. S. Rules suspended.

02-16. S. Read a third time and **concurred in**.

02-16. S. Ordered immediately messaged.

02-16. A. Received from Senate concurred in.

JP

2009
ENROLLED BILL

09en A B-419

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

09-2067/1

Amendments to above (if none, write "NONE"):

AA1 — a 0783/1

Corrections - show date (if none, write "NONE"):

DEC. 8, 2009

Topic

Rel

2-16-2010

Date

JR Miller
Enrolling Drafter



State of Wisconsin
2009-2010 LEGISLATURE

CORRECTIONS IN:

2009 ASSEMBLY BILL 419

Prepared by the Legislative Reference Bureau
(December 8, 2009)

1. Page 3, line 17: delete "(5)" and substitute "(5)".

(END)

CORR. 1



2009 ASSEMBLY BILL 419

September 11, 2009 - Introduced by Representatives RADCLIFFE, PARISI, JORGENSEN, SHILLING, BIES, TURNER, HRAYCHUCK, BERNARD SCHABER, STEINBRINK, ROYS, STASKUNAS, BERCEAU and SUDER, cosponsored by Senators TAYLOR and KEDZIE. Referred to Committee on Corrections and the Courts.

1 **AN ACT to renumber and amend 949.04 (2); to amend 949.24 (1); and to create**
2 **901.08, 950.04 (1v) (er), 971.23 (5c) and 971.23 (6c) of the statutes; relating to:**
3 **rape shield provisions in civil proceedings, discovery and inspection of victims**
4 **and witnesses, and victims rights.**

Analysis by the Legislative Reference Bureau

This bill prohibits a court from ordering a witness or a victim, as a condition of allowing testimony in a criminal case involving sexual assault or repeated sexual assault of a child, sexual assault, or other criminal acts that are sexually motivated, to submit to a mental examination to assess his or her credibility. This bill also generally prohibits a defendant from compelling a crime victim to a pretrial interview or deposition.

Current law provides for compensation to victims of certain crimes and to health providers who perform certain procedures on victims of a sex offense. The Department of Justice designs forms for persons applying for compensation. This bill makes any personally identifiable information about the victim on the form confidential and not a public record.

Generally, evidence that has the tendency to make the existence of a fact more probable or less probable (relevant evidence) is admissible in a court action that involves the issues concerning that fact. Some relevant evidence is excluded from admission if it creates unfair prejudice, confuses the issues, misleads the jury, or is repetitious of other evidence. Some relevant evidence, such as the test for the presence of HIV, is not admissible as evidence to prove a person's character. Some

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relevant evidence is not admissible unless the collection of that evidence is done under certain protocols or by certain persons certified to collect that evidence, such as the presence of lead in dust.

This bill prohibits, in any civil action seeking damages, the admission of evidence concerning the sexual conduct of a person who has been the victim of certain criminal acts, including sexual assault, sexual exploitation by a therapist, and sexual crimes against children if that evidence is offered to prove the victim engaged in other sexual conduct or to prove the victim's sexual predisposition. This prohibition does not apply to evidence of consensual sexual conduct between the victim and the alleged offender or to evidence of sexual conduct that resulted in the victim's damages if that evidence is first shown to the court in the judge's chambers to be related to the victim's damages.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 901.08 of the statutes is created to read:

2 **901.08 Admissibility of sexual conduct. (1)** In this section:

3 (a) "Sexual conduct" means any conduct or behavior relating to sexual
4 activities, including prior experience of sexual intercourse or sexual contact, use of
5 contraceptives, and sexual life-style.

6 (b) "Sexual misconduct" includes a violation of s. 940.22 (2), 940.225 (1), (2), or
7 (3), 940.32, 942.08, 942.09, 948.02, 948.025, 948.05 (1) or (1m), 948.055 (1), 948.06,
8 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, or 948.11 (2) and includes sexual
9 harassment, as defined in s. 111.32 (13).

10 (c) "Victim" means a person against whom sexual misconduct allegedly has
11 been committed.

12 **(2)** In a civil action involving damages for an injury resulting from sexual
13 misconduct, any evidence concerning a victim's sexual conduct, opinions of the
14 victim's sexual conduct, and reputation as to the victim's sexual conduct, offered to

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1 prove that the victim engaged in other sexual conduct or to prove the victim's sexual
2 predisposition may not be admitted into evidence during the course of any hearing
3 or trial, nor may any reference to such sexual conduct be made in the presence of the
4 jury, except the following:

5 (a) Evidence of the specific, consensual sexual conduct between the alleged
6 offender and the victim.

7 (b) Evidence of specific instances of sexual conduct by the alleged victim after
8 an in camera showing by the party requesting the admission that the sexual conduct
9 was the actual cause of the victim's injury for which damages are requested in the
10 action.

11 **SECTION 2.** 949.04 (2) of the statutes is renumbered 949.04 (2) (a) and amended
12 to read:

13 949.04 (2) (a) The department shall prescribe application forms for awards
14 under this subchapter and. If the application results from the commission of or the
15 attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025,
16 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that

17 was sexually motivated, as defined in s. 980.01 ^{INSERT CORR. 1} any personally identifiable
18 information, as defined in s. 19.62 (5), provided on the application form is

19 confidential and not a public record. ^{INSERT AA1-1}

20 (b) The department shall furnish law enforcement agencies with the forms
21 under par. (a). The law enforcement agency investigating a crime shall provide forms
22 to each person who may be eligible to file a claim under this subchapter.

23 **SECTION 3.** 949.24 (1) of the statutes is amended to read:

24 949.24 (1) **ELIGIBILITY.** Any health care provider who conducts an examination
25 to gather evidence regarding a sex offense may apply for an award under this

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AA1-2

1 subchapter. Any personally identifiable information, as defined in s. 19.62 (5)
2 provided on the application form about the victim of the sex offense is confidential
3 and is not a public record.

4 SECTION 4. 950.04 (1v) (er) of the statutes is created to read:

5 950.04 (1v) (er) To not be compelled to submit to a pretrial interview or
6 deposition by a defendant or his or her attorney as provided under s. 971.23 (6c).

7 SECTION 5. 971.23 (5c) of the statutes is created to read:

8 971.23 (5c) PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of
9 s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the
10 underlying conduct was sexually motivated, as defined in s. 980.01 (5), the court may
11 not order any witness or victim, as a condition of allowing testimony, to submit to a
12 psychiatric or psychological examination to assess his or her credibility.

13 SECTION 6. 971.23 (6c) of the statutes is created to read:

14 971.23 (6c) INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04,
15 the defendant or his or her attorney may not compel a victim of a crime to submit to
16 a pretrial interview or deposition.

17 SECTION 7. Initial applicability.

18 (1) The treatment of section 971.23 (5c) of the statutes first applies to
19 complaints filed on the effective date of this subsection.

20 (END)



**ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 419**

September 30, 2009 - Offered by Representative PARISI.

AA1-1

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 19: delete that line and substitute "not subject to inspection or
3 copying under s. 19.35 (1)".

4 **2.** Page 3, line 23: delete the material beginning with that line and ending with
5 page 4, line 3.

6 (END)